

ROLES AND RESPONSIBILITIES FOR SECTION 106 APPLICANTS



NATIONAL HISTORIC PRESERVATION ACT OF 1966 (NHPA)

It is the nation's first environmental law and it is the most comprehensive historic preservation legislation in U.S.



CONSULTATION

Section 106 is a consultation process more so than a review



WHO DOES WHAT IN 106

UNDER SECTION 106, THE **FEDERAL AGENCY** MUST:

Establish the
Federal
“Undertaking”

Determine the
area of Potential
Effects (APE)

Identify historic
properties within
APE

Determine the
effect that project
will have on
historic
properties

Resolve any
potential adverse
effects through
avoidance,
minimization,
mitigation

FEDERAL AGENCY RESPONSIBILITY

Consultation is technically between the Federal Agency and the SHPO, but the Federal Agency often delegates or passes on the task of carrying it out to a consultant or other entity.



The more it gets passed on, the less clear the expectations and the requirements become.

Regardless, the official responsibility remains with the Federal Agency.

WHAT DOES THE SHPO DO?

The SHPO is a mandatory consulting party in the process.



- The SHPO is *not* the authority.
- The SHPO is *not* a regulatory agency.
- The SHPO does *not* do research or make determinations for agencies.

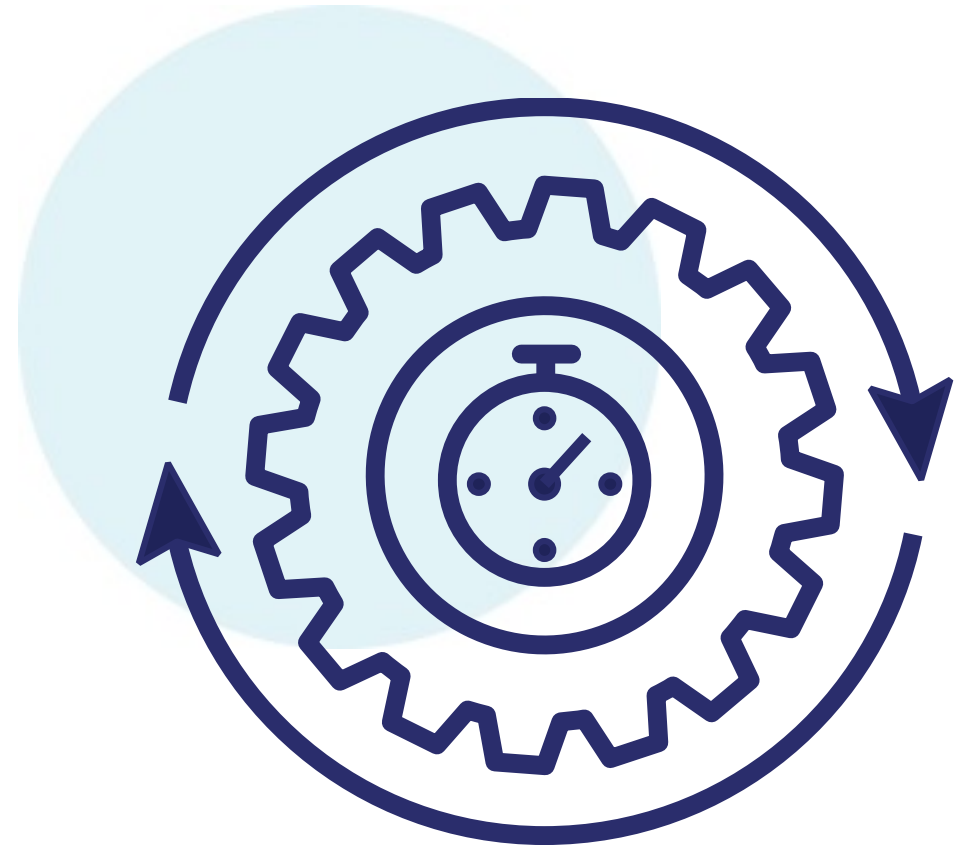
WHAT'S CHANGING?

- **Use of Qualified Consultants to conduct at a minimum the identification of historic resources.**
 - This includes utilizing an archaeologist for projects involving ground disturbance and an architectural historian for projects involving impacts to architectural resources
- **If the application is being submitted by an applicant other than the Federal Agency, a letter of formal delegation of authority is now required.**



WHY NOW?

- Aligns with regulations and best practices
- Shorten review times
- Reduce requests for more information
- Better data in, better data out



SECTION 110 OF THE NATIONAL HISTORIC PRESERVATION ACT: SECRETARY OF THE INTERIOR'S STANDARDS AND GUIDELINES FOR FEDERAL AGENCY HISTORIC PRESERVATION PROGRAMS, STANDARD 2(b)

- **Standard 2:**

An agency provides for the timely identification and evaluation of historic properties under agency jurisdiction or control and/or subject to effect by agency actions. [Sec. 110(a)(2)(A), and Sec. 112]

- **Guideline 2(b):**

(b) The Secretary of the Interior has issued standards and guidelines for identification and evaluation of historic properties (in *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* [48 FR 44720-44726]), which should be used to ensure that the preservation program's identification and evaluation procedures will be adequate and appropriate. Identification and evaluation of historic properties must be conducted by professionally qualified individuals. [Sec. 101(g), Sec. 101(h), and Sec. 112]

<https://www.nps.gov/fpi/Section110.html>

36 CFR PART 800.2(a)(1) AND PART 800.2(a)(3)

- **§ 800.2 Participants in the Section 106 process**
 - **(1) Professional Standards.** Section 112(a)(1)(A) of the act requires each Federal Agency responsible for the protection of historic resources, including archaeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.
 - **(3) Use of Contractors.** Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultant, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

FEDERAL QUALIFICATIONS

What are they?

- *Secretary of the Interior's Standards and Guidelines*
- Federal standards used across the country for preservation and archaeology professionals.
- Published in the Code of Federal Regulations, 36 CFR Part 61



- History



- Architectural History



- Archaeology



PROFESSIONAL QUALIFICATION STANDARDS

History

- The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:
- At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historic organization or agency, museum, or other professional institution; or
- Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

Archeology

- The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:
- At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
- At least four months of supervised field and analytic experience in general North American archeology, and
- Demonstrated ability to carry research to completion.
- In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

Architectural History

- The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:
- At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
- Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

PROFESSIONAL QUALIFICATION STANDARDS

Architecture

- The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time experience in architecture; or a State license to practice architecture.

Historic Architecture

- The minimum professional qualifications in historic architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:
- At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
- At least one year of full-time professional experience on historic preservation projects.
- Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

https://www.nps.gov/history/local-law/arch_stnds_9.htm

800.4 IDENTIFICATION OF HISTORIC RESOURCES

(a) Determine scope of identification efforts

1

**POTENTIAL
EFFECTS**

Determine and document the area of potential effects, as defined in § 800.16(d)

2

REVIEW

Review existing information on historic properties within the APE, including any data concerning possible historic properties not yet identified.

3

**SEEK
INFORMATION**

Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties

4

**GATHER
INFORMATION**

Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal land, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).

WHAT MAKES A PROPERTY HISTORIC?

VIII. HOW TO EVALUATE THE INTEGRITY OF A PROPERTY

INTRODUCTION

Integrity is the ability of a property to convey its significance. To be listed in the National Register of Historic Places, a property must not only be shown to be significant under the National Register criteria, but it also must have integrity. The evaluation of integrity is sometimes a subjective judgment, but it must always be grounded in an understanding of a property's physical features and how they relate to its significance.

Historic properties either retain integrity (this is, convey their significance) or they do not. Within the concept of integrity, the National Register criteria recognizes seven

SEVEN ASPECTS OF INTEGRITY

- Location
- Design
- Setting
- Materials
- Workmanship
- Feeling
- Association

UNDERSTANDING THE ASPECTS OF INTEGRITY

DESIGN

Design is the combination of elements that create the form, plan, space, structure, and style of a property. It results from conscious decisions made during the original conception and planning of a property (or its significant alteration) and applies to activities as diverse as community planning, engineering, architecture, and landscape architecture. Design includes such elements as organization of space, proportion, scale, technology, ornamentation, and materials.

A property's design reflects historic functions and technologies as well as aesthetics. It includes such considerations as the structural system; massing; arrangement of spaces;

II. THE NATIONAL REGISTER CRITERIA FOR EVALUATION

CRITERIA FOR EVALUATION:³

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of persons significant in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded, or may be likely to yield, information important in prehistory or history.

CRITERIA CONSIDERATIONS:

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties *will qualify* if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- a. A religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- b. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

- c. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life; or
- d. A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- e. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- f. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
- g. A property achieving significance within the past 50 years if it is of exceptional importance.

TYPES OF HISTORIC PROPERTIES

BUILDING

OBJECT

DISTRICT

SITE

STRUCTURE



Mackinaw Point
Lighthouse

James Scott Fountain
Belle Isle

Old Town
Lansing

Joseph S. Fay
Shipwreck

Fallasburg Bridge
Lowell

ARCHAEOLOGY

- Historic sites are not limited to those you can see
- Section 106 identification efforts must include potential archaeological sites



GOT OUR IDENTIFICATION DONE, WHAT NEXT?

Whoever is preparing the application must take the results of the identification efforts and the scope of work of the project to **determine the effect** on the historic resources in the area of potential effect.



DETERMINATION OF EFFECTS



- No Historic Properties Affected
- No Adverse Effect (there are historic properties, but they won't be negatively impacted)
- Adverse Effect

ADVERSE EFFECT ON HISTORIC PROPERTIES

**This determination is
the most onerous.**

Accounts for about **1%**
of all the projects reviewed.

Adverse effects include:

- Demolition of, or alteration to, the property or environment;
- Changes in use or setting;
- Introduction of intrusive audible or visual elements;
- Neglect;
- Transfer of property from federal ownership.

ADVERSE EFFECT - WHAT NEXT?



1 Agencies must first seek ways to avoid adverse effects on historic properties.

2 If no feasible alternatives exist, agencies must mitigate the adverse effect.

ROLL – OUT & SUMMARY OF CHANGES



Beginning July 1, 2020, SHPO research will only be available to archaeologists, architectural historians, and historians who **meet the federal professional qualifications**.

Beginning July 1, 2020, any application for Section 106 consultation submitted by a consultant or other entity that is not a federal agency must include a **letter of formal delegation of authority** from the agency.

A new application for Section 106 consultation in Michigan will be available for use in early August and will be required starting January 1, 2021.

Stay tuned to our website and social media for further updates.



www.Michigan.gov/SHPO

QUESTIONS?



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